

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NEW YORK PARTY SHUTTLE, LLC

and

Case 02-CA-073340

FRED PFLANTZER

ORDER¹

The Petition to Revoke subpoena duces tecum B-733335, addressed to the Custodian of Records for Wells Fargo Bank, N.A., is denied. The Petitioner, New York Party Shuttle, LLC, does not have standing to file a petition to revoke a subpoena that is addressed to a third party unless it asserts that the requested information is protected by a privilege or a right of privacy.²

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² “Ordinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action unless the party claims some personal right or privilege with regard to the documents sought.” *In re Grand Jury Subpoena John Doe, No. 05GJ1318*, 584 F.3d 175, 184 fn. 14 (4th Cir. 2009), citing 9A Wright, Miller & Cooper, *Federal Practice and Procedure* § 2459 (3d ed. 1998). The Employer has failed to substantiate its assertion that the corporate bank records sought are either confidential or a trade secret, and they are not protected by the Financial Privacy Act, 12 U.S.C. §3401 et seq. Member Miscimarra does not reach the question of whether Petitioner has standing, because – if one assumes standing exists – Member Miscimarra agrees that Petitioner has not established a sufficient basis for revoking the subpoena. However, on the issue of standing, Member Miscimarra notes that courts in some cases not involving the National Labor Relations Act have held that private party has standing to quash a subpoena served on a third-party bank for the party’s bank records. See *Transcor, Inc. v. Furney Charters, Inc.*, 212 F.R.D.588, 590-591 (D. Kan. 2003); *Microsoft Corp. v. Technology Enterprises, LLC*, 2008 WL 424613 (S.D. Ind. Feb. 13, 2008); *Catskill Development, L.L.C. v. Park Place Entertainment Corp.*, 206 F.R.D. 78, 93 (S.D.N.Y. 2002). Other courts have found standing not to exist. *United States v. Gordon*, 247 F.R.D. 509, 510 (E.D.N.C. 2007) (finding no standing); *Clayton Brokerage Co., Inc. v. Clement*, 87 F.R.D. 569, 571 (D. Md. 1980) (finding no standing).

In addition, even assuming that the Petitioner had such standing, we find that the subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoenas.³ See generally, *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).⁴

Dated, Washington, D.C., July 28, 2015.

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
LAUREN McFERRAN,	MEMBER

³ Although the Board's underlying Decision and Order, 359 NLRB No. 112 (2013), enf'd. No. 13-60364 (5th Cir. 2013), was decided by a panel that included two persons whose appointments to the Board were held to be invalid by the United States Supreme Court in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), the Fifth Circuit's Order upholding the Board's Decision and Order became final prior to the Supreme Court's decision in *NLRB v. Noel Canning*, supra. In these circumstances, we regard the matters finally resolved by the court of appeals as res judicata in this proceeding. See *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374-378 (1940); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (cited with approval in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010)); see also *The Lorge School*, 355 NLRB 558, 558 fn. 1 (2010).

Moreover, under Sec. 10(e) of the Act, the Board has no jurisdiction to modify an Order that has been enforced by a court of appeals because, upon the filing of the record with the court of appeals, the jurisdiction of that court is exclusive and its judgment and decree are final, subject to review only by the Supreme Court. *Scepter Ingot Castings, Inc.*, 341 NLRB 997, 997 (2004) (citing cases), enf'd. sub nom. *Scepter, Inc. v. NLRB*, 448 F.3d 388 (D.C. Cir. 2006). Sec. 10(e) states, in relevant part: "Upon the filing of the record with [the United States court of appeals] the jurisdiction of the court shall be exclusive and its judgment and decree shall be final," except for potential further review by the Supreme Court. 29 U.S.C. § 160(e).

⁴ In light of these rulings, we find it unnecessary to pass on the timeliness of the Employer's petition.